

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MEDEQUA LLC,	:	
	:	
	:	<u>ORDER AMENDING</u>
Plaintiff,	:	<u>JUDGMENT</u>
-against-	:	
	:	21 Civ. 6135 (AKH)
O'NEILL & PARTNERS LLC,	:	
	:	
Defendant,	:	
	:	
-and-	:	
	:	
TECH 4 GOOD PTY LTD,	:	
	:	
Intervenor Plaintiff,	:	
	:	
-and-	:	
	:	
D&O TRADECO, INC.,	:	
	:	
Intervenor Plaintiff.	:	
	:	
-----	X	

ALVIN K. HELLERSTEIN, U.S.D.J.:

On July 25, 2022 I issued an opinion and order granting summary judgment to Plaintiff. *See* ECF No. 102. The Clerk entered Judgment in favor of Plaintiff on August 11, 2022. *See* ECF No. 106. Now, Plaintiff Medequa seeks to amend that judgment to include an award of interests and costs. Pursuant to my order dated August 12, 2022, any opposition to Plaintiff's motion was due by August 29, 2022. No opposition has been filed. For the reasons that follow, Plaintiff's motion is granted.

In my order granting summary judgment, I considered the parties' briefs and applicable law related to breach of contract and breach of fiduciary duty. Because Plaintiff initially moved for partial summary judgment, the parties did not brief whether Plaintiff is

entitled to interest, and I did not consider that question in granting judgment to Plaintiff. Rule 59(e) of the Federal Rules of Civil Procedure permits amendment of a final judgment provided that a motion requesting such relief is filed within 28 days of the entry of judgment and that the moving party shows that the Court overlooked controlling decisions or data that “that might reasonably be expected to alter the conclusion reached by the court.” *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995).


Under New York law, Plaintiff is entitled to interest at the statutory rate of 9% per year, dating from the “earliest ascertainable date the cause of action existed.” See NY CPLR §§ 5001(b), 5004 (2012); *Graham v. James*, 144 F.3d 229, 239 (2d Cir. 1998). In my order granting summary judgment, I found that Defendant breached its contract with Plaintiff when it failed to return the Escrow Funds. That breach occurred on November 23, 2022, the day after Plaintiff made its request for return of the funds. Had I considered Plaintiff’s entitlement to interest in my order granting summary judgment, I would have found that Plaintiff was entitled to interest beginning on November 23, 2020.

Accordingly, the judgment is amended to award Plaintiff Medequa, LLC \$5,100,000, plus costs and interest from November 23, 2020 at the rate of 9% per year.

The Clerk shall terminate ECF No. 109.

SO ORDERED.

Dated: August 30, 2022
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge